

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

DANNY COHEN,
Appellant,

DOCKET NUMBER
SF-1221-13-0376-W-1

v.

DEPARTMENT OF THE NAVY,
Agency.

DATE: June 20, 2014

THIS FINAL ORDER IS NONPRECEDENTIAL *

Danny Cohen, Imperial Beach, California, pro se.

Katerina L. Chau, San Diego, California, for the agency.

BEFORE

Susan Tsui Grundmann, Chairman
Anne M. Wagner, Vice Chairman
Mark A. Robbins, Member

FINAL ORDER

The appellant has filed a petition for review of the initial decision, which dismissed his individual right of action (IRA) appeal for lack of jurisdiction. For the reasons discussed below, we DISMISS the petition for review as untimely

* A nonprecedential order is one that the Board has determined does not add significantly to the body of MSPB case law. Parties may cite nonprecedential orders, but such orders have no precedential value; the Board and administrative judges are not required to follow or distinguish them in any future decisions. In contrast, a precedential decision issued as an Opinion and Order has been identified by the Board as significantly contributing to the Board's case law. See [5 C.F.R. § 1201.117\(c\)](#).

filed without good cause shown for the filing delay. See [5 C.F.R. § 1201.114](#)(e) & (g).

BACKGROUND

On July 2, 2013, the administrative judge issued an initial decision dismissing the appellant's IRA appeal for lack of jurisdiction. The decision informed the appellant that the initial decision would become the Board's final decision unless a petition for review was filed no later than August 6, 2013. The appellant filed a pleading on September 20, 2013, in which he appeared to ask the Board to vacate the initial decision pursuant to a settlement agreement between the parties. Petition for Review (PFR) File, Tab 1. The settlement agreement attached to the pleading was signed only by the appellant, however. *Id.* The Clerk of the Board acknowledged the pleading as a petition for review of the July 2013 initial decision but advised the appellant that it appeared to be untimely filed and that the Board's regulations require that he file a motion, supported by a declaration under penalty of perjury or other sworn statement showing that the petition was timely filed or that there is good cause to waive the untimely filing. PFR File, Tab 2; see [5 C.F.R. § 1201.114](#)(g). The appellant did not respond to the Clerk's notice. The agency filed a pleading urging the Board to dismiss the appellant's pleading as untimely filed and stated that it had not entered into any settlement agreement with the appellant. PFR File, Tab 3.

ANALYSIS

The Board's regulations require that a petition for review must be filed within 35 days after the date of the issuance of the initial decision or, if a party shows that he received the initial decision more than 5 days after it was issued, within 30 days after the receipt of the initial decision. [5 C.F.R. § 1201.114](#)(e). The Board will excuse the filing deadline for a petition for review only upon a showing of good cause. [5 C.F.R. § 1201.114](#)(g).

The appellant has failed to show good cause for the untimely filing of his September 20, 2013 pleading. In fact, he has failed to provide any reason for his untimely pleading. In any event, even if the appellant's pleading were considered on the merits, it would be summarily rejected because he did not make any argument that the initial decision was wrongly decided or that any of the criteria for granting a petition for review applies in this case. See [5 C.F.R. §§ 1201.114\(a\)\(1\), 1201.115\(a\)-\(d\)](#).

The Board's regulations provide that an initial decision will not become the Board's final decision if, within the time limit for filing a petition for review, a party files a request that the initial decision be vacated for the purpose of accepting a settlement agreement into the record. [5 C.F.R. § 1201.113\(a\)](#). That regulation has no application in this case, as there is no evidence that a settlement agreement has been reached between the parties.

ORDER

For the above-stated reasons, we DISMISS the petition for review as untimely filed without good cause shown for the delay in filing. This is the final decision of the Merit Systems Protection Board regarding the timeliness of the petition for review. The initial decision remains the final decision of the Board concerning the Board's jurisdiction over the appeal.

NOTICE TO THE APPELLANT REGARDING YOUR FURTHER REVIEW RIGHTS

You have the right to request review of this final decision by the United States Court of Appeals for the Federal Circuit.

The court must receive your request for review no later than 60 calendar days after the date of this order. See [5 U.S.C. § 7703\(b\)\(1\)\(A\)](#) (as rev. eff. Dec. 27, 2012). If you choose to file, be very careful to file on time. The court has held that normally it does not have the authority to waive this statutory deadline

and that filings that do not comply with the deadline must be dismissed. *See Pinat v. Office of Personnel Management*, [931 F.2d 1544](#) (Fed. Cir. 1991).

If you want to request review of the Board's decision concerning your claims of prohibited personnel practices under [5 U.S.C. § 2302](#)(b)(8), (b)(9)(A)(i), (b)(9)(B), (b)(9)(C), or (b)(9)(D), but you do not want to challenge the Board's disposition of any other claims of prohibited personnel practices, you may request review of this final decision by the United States Court of Appeals for the Federal Circuit or any court of appeals of competent jurisdiction. The court of appeals must receive your petition for review within 60 days after the date of this order. *See* [5 U.S.C. § 7703](#)(b)(1)(B) (as rev. eff. Dec. 27, 2012). If you choose to file, be very careful to file on time. You may choose to request review of the Board's decision in the United States Court of Appeals for the Federal Circuit or any other court of appeals of competent jurisdiction, but not both. Once you choose to seek review in one court of appeals, you may be precluded from seeking review in any other court.

If you need further information about your right to appeal this decision to court, you should refer to the federal law that gives you this right. It is found in Title 5 of the United States Code, section 7703 ([5 U.S.C. § 7703](#)) (as rev. eff. Dec. 27, 2012). You may read this law as well as other sections of the United States Code, at our website, <http://www.mspb.gov/appeals/uscode/htm>. Additional information about the United States Court of Appeals for the Federal Circuit is available at the court's website, www.ca9c.uscourts.gov. Of particular relevance is the court's "Guide for Pro Se Petitioners and Appellants," which is contained within the court's [Rules of Practice](#), and [Forms](#) 5, 6, and 11. Additional information about other courts of appeals can be found at their

respective websites, which can be accessed through
http://www.uscourts.gov/Court_Locator/CourtWebsites.aspx.

FOR THE BOARD:

William D. Spencer
Clerk of the Board

Washington, D.C.